



July 28, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of
the Commission's Rules; WC Docket No. 02-112 and CC Docket No. 00-175**

Dear Ms. Dortch:

Attached are reply comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Section 272(f)(1) Sunset of the BOC Separate)	WC Docket No. 02-112
Affiliate and Related Requirements)	
)	
2000 Biennial Regulatory Review Separate)	
Affiliate Requirements of Section 64.1903 of)	CC Docket No. 00-175
the Commission's Rules)	
)	

**REPLY COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (“ALTS”) hereby files its reply comments in the above-referenced proceedings in response to the Commission’s Further Notice of Proposed Rulemaking regarding the appropriate classification of Bell Operating Companies’ (“BOCs”) and independent local exchange carriers’ (“independent ILECs”) provision of in-region interLATA and international services.¹ ALTS filed comments in this docket last year urging the Commission not to allow the Section 272 safeguard provisions to sunset after the 3-year period provided in Section 272(f)(1).² Furthermore, ALTS emphasized that if the Commission did allow the structural and nondiscrimination safeguards to sunset, it must immediately adopt and impose performance metrics and standards for special access and UNE provisioning. ALTS reiterates its concerns with BOC discriminatory behavior and once again urges the Commission to adopt performance metrics and standards, as it has promised to

¹ Further Notice of Proposed Rulemaking, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*; WC Docket 02-112 and CC Docket 00-175 (rel. May 19, 2003) (“FNPRM”).

² See ALTS Comments, WC Docket 02-112 (filed July 22, 2002).

do.

None of the state regulators that filed comments in this proceeding support removing the ILECs from regulatory oversight at this time. For example, the Missouri PSC is "concerned that the goals for attaining a competitive environment may be jeopardized if a regulatory scheme, designed to protect consumers in markets where one company is able to exercise market power, is not left in place until such time as competition is able to effectively substitute for regulation."³ ALTS shares this concern. Although progress has been made toward opening local markets to competition, the ILECs' "continued dominance over local exchange and [] exchange access services still hinders the development of a fully competitive market, especially given the current status of the financial markets, competitive local exchange carriers' ("CLECs") access to capital, and the bankruptcy of many competitive carriers."⁴ Without the safeguard requirements of maintaining a separate subsidiary or alternative performance and reporting requirements, regulators will have no means of determining if an ILEC is providing nondiscriminatory service.

The Commission has previously recognized that the BOCs have the ability and incentive to discriminate against their competitors. The BOCs are no less able or less motivated to discriminate now, despite of the passage of almost four years since the first BOC obtained Section 271 approval. Moreover, because of the industry downturn and the exit of many competitive carriers from the market since Verizon gained approval in New York in December 1999, the BOCs may be even more able to act anti-competitively due to the lack of

³ Missouri PSC Comments at 6. *See also* Texas PUC Comments and NJ Ratepayer Advocate Comments.

⁴ Texas PUC Comments at 2.

competitive market forces disciplining their behavior.⁵ "The incentive to discriminate is also present, since BOCs that have received Section 271 approval are eager to increase their long distance market shares."⁶ The BOCs have had little difficulty competing in the long distance market with a separate affiliate, and the majority of their customers are within in-region states where they can bundle local and long distance services, thereby increasing their ability to act anti-competitively, by cross-subsidizing, for example.⁷ Moreover, competitive carriers continue to receive discriminatory treatment in states where BOCs now provide in-region long distance services, even *with* the Section 272 safeguards in place. To remove those safeguards at this time without imposing alternative performance and reporting requirements would do nothing but further encourage anti-competitive behavior and forestall the growth of competition.

To avoid this result, the Commission should immediately adopt and impose performance metrics and standards for special access and UNE provisioning. Even if the Section 272 safeguards are eliminated, the nondiscrimination requirements of the Act remain; therefore, the Commission must, at the very least, adopt reporting requirements, metrics and standards to help ensure the BOCs provide nondiscriminatory access to their facilities. BOCs have the incentive to raise their rivals' costs, to decrease the quality of rivals' service offerings, and to increase the time to deploy competitive services. Properly constructed measurements and standards will enable regulators and industry members to detect such discrimination and,

⁵ See *id.* at 6.

⁶ NJ Ratepayer Advocate Comments at 5.

⁷ *Id.* at 6.

when linked to adequate self-effectuating remedies, might also effectively deter BOCs from engaging in such discrimination.

Without such requirements, the Commission and competitors will have no viable way of monitoring the BOCs' activities to determine if the BOC is favoring its own retail provisioning over its wholesale provisioning to competitors. Performance metrics and remedies will deliver very substantial long-term benefits through increased competition, lower prices, and innovation. These benefits far outweigh any costs of implementing such metrics. Performance measurements create a public record of obligations and oversight and would increase the likelihood of detection, which deters bad behavior. Thus, if the Commission removes the safeguards of Section 272, it must replace them with an alternative means for publicly monitoring the BOCs' behavior.

ALTS is a member of the Joint Competitive Industry Group ("JCIG") and fully supports the proposals submitted by JCIG for performance and reporting requirements for special access services.⁸ In addition, ALTS has filed comments recommending similar performance and reporting requirements for UNE provisioning.⁹ The NJ Ratepayer Advocate also proposes the Commission adopt "reporting requirements, metrics, standards, and penalties to ensure that BOCs and independent LECs provide nondiscriminatory access to their facilities."¹⁰ Similar to ALTS' recommendations, the NJ Ratepayer Advocate endorses regular filing of performance reports, FCC-established benchmark performance standards for each service category,

⁸ See ALTS Comments, CC Docket 01-321 (filed Jan. 1, 2002) and JCIG filings in CC Docket 01-321;

⁹ See also ALTS Comments, CC Docket 01-318 (filed Jan. 1, 2002).

¹⁰ NJ Ratepayer Advocate Comments at 7-8.

monitoring of LECs' performance compared to the benchmark standard to ensure nondiscriminatory service to non-affiliates, and the imposition of self-executing remedies where ILECs fail to meet the benchmark requirements.¹¹ Chairman Powell announced in his testimony to the Senate Commerce Committee in January that the Commission would soon consider establishing and enforcing national performance measurements and standards after completion of its Triennial Review.¹² ALTS strongly urges the Commission to adopt these national rules immediately.

CONCLUSION

ALTS urges the Commission to continue the requirements of Section 272 for BOC provisioning of in-region interLATA services. However, if the Commission decides to remove those structural and nondiscrimination safeguards, it must immediately adopt and impose reporting requirements and performance metrics and standards for special access and UNE provisioning.

Respectfully Submitted,

**Association for Local
Telecommunications Services**

By: /s/Teresa K. Gaugler
Jonathan Askin
Teresa K. Gaugler
888 17th Street, NW
Washington, DC 20005
(202) 969-2587

¹¹ *Id.* at 7-8.

¹² Written Statement of Michael K. Powell, Chairman, Federal Communications Commission, *Competition Issues in the Telecommunications Industry*, before the Committee on Commerce, Science, and Transportation, United States Senate, January 14, 2003.

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